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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

DATE: JUL 12 2011 OFFICE: NEBRASKA SERVICE CENTER [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner seeks to classify the beneficiary pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner, a designer and manufacturer of semiconductors, seeks to employ the beneficiary as a senior device engineer. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the beneficiary qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a brief from counsel and numerous exhibits, many of them previously submitted.

In this decision, the term "prior counsel" shall refer to [redacted], who represented the petitioner at the time the petitioner filed the petition. The term "counsel" shall refer to the present attorney of record.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the beneficiary qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now U.S. Citizenship and Immigration Services (USCIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Act. Assoc. Comm'r. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The AAO also notes that the regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the Form I-140 petition on April 15, 2009. In an introductory letter, [redacted] with the petitioning company, stated:

> [The petitioner] is a premier analog company, creating high-value analog devices and subsystems. [The petitioner's] leading-edge products include power management circuits, display drivers, audio and operation amplifiers, interface products and data conversion solutions. [The petitioner's] key analog markets include wireless handsets, displays, and a variety of broadband electronics markets. . . .
>
> [The petitioner] seeks to employ [the beneficiary] as a senior device engineer, with a focus on packaging engineering, on a full-time, permanent basis. As a senior device engineer, [the beneficiary] will be developing and researching improved methods for packaging various devices developed by [the petitioner], including but not limited to printed circuit board and LED devices. Through the application of his device packaging expertise, [the beneficiary] will lead [the petitioner's] efforts in developing novel and improved device packaging materials and methods.
>
> [The beneficiary's] work in this field will be critical to [the petitioner's] success as a semiconductor fabricator and a leading innovator in semiconductor chip device operations. By developing devices that operate in smaller environments and withstand operational pressures generally associated with device functioning, [the beneficiary] will be advancing [the petitioner's] technological and commercial position within the industry. . . . The United States is in critical need for engineers and other scientists of [the beneficiary's] caliber in creating new and innovative technologies in this field.

Prior counsel stated:

> [The beneficiary] is a professional in the field of semiconductor device packaging with more than a decade of experience. . . .
>
> Presently, [the beneficiary's] work at [the petitioning company] is crucial to the company's continued ability to achieve optimally [*sic*] device packaging designs for improving next generation electronic device capabilities. His work has led to the development of novel and innovative methods for calculating the distribution of energy throughout the devices for which he designs packages, as well as developing new chip structures and packaging devices that are aimed at achieving device scaling while maintaining device operational properties.

Prior counsel advanced general arguments about the importance of the semiconductor industry to establish the intrinsic merit and national scope of the beneficiary's work, and asserted that the beneficiary individually qualifies for a national interest waiver because he "has demonstrated an extensive ability to successfully identify better methods for encapsulating semiconductor devices and chips in a way that contributes to better operational properties and longer device life."

Most of the exhibits accompanying the initial submission consisted of background information about the beneficiary's occupation and the semiconductor industry, and basic documentation of the beneficiary's professional credentials. Prior counsel described original exhibit 5 as "a selected publication authored by [the beneficiary], along with a citation list." The adjective "selected" implies the existence of other publications, but the petitioner did not submit them and USCIS is under no obligation to seek out other unidentified publications that the petitioner did not submit for consideration. *See* section 291 of the Act, which places the burden of proof on the party seeking immigration benefits.

The fifth exhibit in the petitioner's initial submission is not a "publication" by the beneficiary, but rather two conference programs. (The exhibit list contained no mention of conference programs.) The program from the [redacted] listed the beneficiary as a co-author of a presentation entitled '[redacted]' The program from the Advanced Technology Workshop on Packaging & Assembly of Power LEDs listed the beneficiary as a co-author of [redacted] The AAO can find no citation list accompanying this exhibit.

The beneficiary's *curriculum vitae* listed nine items under the heading "Publications." Six of these items, as identified, are actually conference presentations dating from 2001 to 2005. The remaining three items date from 2000 to 2002. The record does not appear to contain copies of the articles themselves (or English translations thereof). The petitioner did not claim that the petitioner has produced any published or presented work since 2005.

The petitioner also submitted copies of three "patent applications related to [the beneficiary's] work," all filed on behalf of the beneficiary's former employer, Samsung Electronics Company in 2006-2007. The petitioner did not claim that the United States Patent and Trademark Office had approved the patent applications.

Five witness letters accompanied the petition. [redacted] for the petitioner's Packaging Research Group, stated:

> [The beneficiary] has had an impressive career in the field of electrical engineering, and he has obtained nearly a decade of experience with device packaging. During that time, he has made several packaging discoveries and implemented several packaging design innovations that have allowed for several chip design improvements, including device scaling to reduce the chip size. . . . [The beneficiary] has developed novel packaging concepts and manufacturing methods for light-emitting diode (LED) components in increasing the ability for the devices to generate light, and withstand the heat that is created during operation. Through the improved packaging of such devices, overall semiconductor functionality is increased, and the device's operational capacity contributes to the advancement of the industry as a whole. . . .

The design innovations that [the beneficiary] developed have revolutionized device scaling and operation in smaller environments. . . .

[The beneficiary's] work is critical to [the petitioner's] success as a fabricator and a leading innovator in the field of semiconductor chip device design. For instance, since joining the staff at [the petitioning company], [the beneficiary] has filed five invention disclosures in the field of high speed short haul optical links (SHOL), with as many more under preparation. SHOL is projected to replace copper-based lines at lower power and cost. . . .

Accordingly, as a result of [the beneficiary's] proven success, publication, invention disclosures and patent record, professional distinction through his work at SAIT and [the petitioning company], and extensive innovation in the field of electronic packaging, [the beneficiary] has distinguished himself as a truly visionary, exceptional engineer in [the] field of microelectronic packaging.

[redacted]), where the beneficiary earned his bachelor's and master's degrees, stated:

I had the pleasure of supervising [the beneficiary's] study on a project involving ball grid array design innovation for semiconductor chips. As a result of my supervision of his research, I learned of [the beneficiary's] exceptional talent and outstanding ability in his field of scientific endeavor. The ball grid array is a popular surface mount chip that uses a grid of solder balls as connectors on the chip. The research that I supervised for [the beneficiary] involved solder ball bumping techniques for silicon chips with high inputs and outputs and fine pitch. . . .

In the course of his research, [the beneficiary] developed a method for decreasing the height difference of the solder ball before mounting the chip on a printed circuit board. . . . Ultimately, the result was increased product reliability with fewer stress related performance problems. [The beneficiary] also demonstrated the ability to successfully integrate design hardware tools into such solder ball bumping equipment and developed successful testing procedures in innovating the product design. Accordingly, [the beneficiary's] work on this project represents a major finding in the field of chip design and packaging.

. . . Moreover, [the beneficiary] has made groundbreaking discoveries beyond his studies at Moscow State Institute. . . . [O]ne of his most significant findings is outlined below. Specifically, [the beneficiary] developed a construction technique through the use of modernized magnetron sputtering equipment. . . . [The beneficiary] discovered a new application for polyimide film as a flexible interposer, by using the film's shock absorbing properties and elastic properties. This fabrication is useful in

> flip chip designs, as . . . the metalized film[] creates connections without the need for the wire attachment. Additionally, [the beneficiary's] design innovation allows for direct chip attachment to a printed circuit board through the use of a flexible carrier. The breakthrough eliminated previously encountered special limitations and restriction imposed on the silicon chip and printed circuit board designs. . . . [The beneficiary's] technique has been lauded by academic and industry experts, as it has demonstrated high assembly reliability and great utility within the industry.

With respect to the last sentence quoted above, [redacted] did not identify the "academic and industry experts" or demonstrate the extent to which "the industry" was using the beneficiary's designs. All of the petitioner's initial witnesses have worked closely with the beneficiary.

The remaining three witnesses worked with the beneficiary at the [redacted] in South Korea. [redacted] stated:

> In my professional opinion, [the beneficiary] has made outstanding and significant contributions in the field of semiconductor technology and innovation. . . . While working with wafer level chip scale packaging, [the beneficiary] developed a method for silicon wafer thinning down to 50 micrometers and forming metalized vias in order to form cap wafer or wafer-to-wafer bonding. Essentially, by developing these advanced wafer level chip scaling techniques, [the beneficiary] was able to achieve ultra-small, ultra-efficient packaging while still protecting sensitive parts of the microelectrical mechanical system from the harsh operating conditions present in the circuit.
>
> . . . [The beneficiary's] outstanding work has the ability to contribute immeasurably to the U.S. semiconductor industry. . . . A key area of research interest is the increasing scaling of semiconductor devices, including smaller dimensions for all semiconductor components. . . .
>
> [The beneficiary's] contributions have added significantly to the advancement of the semiconductor industry and semiconductor device design. . . . [The beneficiary's] contributions to chip packaging allow for the continued competitive U.S. position in the global industry.

[redacted], stated:

> I first became familiar with [the beneficiary's] work in 2002, when [the beneficiary] joined my group at the MEMS Laboratory at SAIT, where he worked as a packaging engineer. [The beneficiary] was involved in several major projects focusing on imaging sensors, MEMS, and high-power light emitting diode (LED) packaging. The research goal in the lab was to invent novel approaches to packaging such devices

while integrating existing technologies in the development of modern semiconductor solutions. [The beneficiary's] contributions with all of the projects conducted at the MEMS Laboratory clearly have been powerful innovations contributing to the Lab's goals.

During his tenure with [redacted], [the beneficiary] made a number of original scientific contributions to the projects in our lab. Some of [the beneficiary's] contributions represented novel developments in the field and truly served to help SAIT in maintaining a competitive position in the industry. For instance, [the beneficiary] developed a novel high-powered LED flip chip structure. . . . The unique element in [the beneficiary]s chip structure is its ability to withstand increased heat applications, which is essential in the soldering process. Additionally, the increase in the device's thermal budget, or ability to withstand and retain heat, greatly improves the optical performance of the LED device.

. . . [T]here is no doubt that [the beneficiary] has influenced the field through his remarkably innovative work and has created potential positive economic impacts that will serve any company for whom he may work. . . .

As a result of his work, [the beneficiary] has influenced the research of a major academic institution in Russia and one of the top semiconductor companies in the world – Samsung – through his service to the company in Korea. Now at [the petitioning company,] the beneficiary is assisting the United States in maintaining a globally competitive position in the semiconductor industry.

[redacted] stated:

[The beneficiary and I] worked together on a joint project at [redacted] involving new generation Al-based printed circuit boards (PCBs) and their implementation in high-power light emitting diodes (LED). . . . Some LEDs come complete with a series of resistors, and these LEDs are particularly valuable because they save space on the PCB and can be helpful in building prototypes or populating the PCB in a way other than as initially designed. However, the resistors can create luminescence problems in that the resistors remove the ability to manipulate the LED's intensity. Therefore, in studying the use of LEDs on PCBs, [the beneficiary] solved a key problem typically encountered in this integration process. Specifically, by using a self-limiting Al oxidation process, [the beneficiary] was able to preven[t] the growth of brittle nanochannels of aluminum oxide. The result was a huge positive impact on the operating capabilities of the electrical and mechanical components of the metal core PCB. . . . [The beneficiary's] novel approach was critical to the entire progress of the project, as without a successful fabrication technique, the project could not move forward. . . .

> During the time that I have known [the beneficiary], I have consistently been impressed with his pioneering research in his scientific studies and its relevance to our scientific community. For instance, [the beneficiary] and his colleagues were able to improve the thermal conductivity of a packaged module when compared to other similar devices, making the engineering solution one that would function under a variety of thermo-mechanical conditions and also solving a major bottleneck in the reliability of this technology.

On September 24, 2009, the director issued a request for evidence (RFE). In the RFE, the director stated that the petitioner's initial evidence "demonstrates that the proposed employment has substantial intrinsic merit and will be national in scope," but stated that additional evidence would be necessary to establish eligibility. The director specifically instructed the petitioner to submit "copies of published articles by other researchers citing or otherwise recognizing the petitioner's research and/or contributions," or printouts from databases identifying articles that contain independent citations of the petitioner's work. The director did not request any other evidence, and instructed the petitioner: "please DO NOT re-submit the same evidence" submitted previously (director's emphasis). In response, the petitioner resubmitted copies of previously submitted exhibits, but no evidence of citation of the beneficiary's published work (notwithstanding prior counsel's earlier reference to a citation list).

The petitioner's response to the RFE also included new letters from counsel and from [redacted], neither of whom acknowledged the director's specific requests or explained why the response to the RFE was diametrically at odds with what the director had asked the petitioner to submit (and not to submit). [redacted] deemed the beneficiary "a vital asset whose work is in the national interest of the United States." Counsel described the resubmitted exhibits and stated that the beneficiary "has provided unique insight and vital contributions in advancing chip packaging technologies, and thus semiconductor operability, during his near decade of experience in the industry."

The director denied the petition on January 20, 2010, again acknowledging the intrinsic merit and national scope of the beneficiary's work, but stating:

> [E]vidence of publication in itself is not sufficient to show impact or influence on the field of endeavor. The evidence must show that the published articles actually impacted or influenced the field of endeavor.
>
> One major indicator of impact or influence is citation by other independent researchers in the field of endeavor. . . .
>
> In this case, the record indicates that the petitioner has a total of nine publications. There was no evidence presented to show how many times these articles were cited.

The director acknowledged the petitioner's submission of several highly complimentary witness letters, but found that the petitioner had failed to submit objective, independent evidence to support the claims in those letters.

On appeal, counsel claims that the director denied the petition "solely for failure to submit evidence that [the beneficiary's] work has been cited by others in the field." Counsel protests that this is not sufficient grounds for denial of the petition. The director devoted two paragraphs of a four-page decision to the issue of citations, which does not indicate that the director focused "solely" on that issue. The record on its face, therefore, refutes this argument by counsel.

Furthermore, it remains that prior counsel's original exhibit list referred to "a selected publication authored by [the beneficiary], along with a citation list." Because the initial submission did not contain these exhibits, it was not unreasonable for the director to request that evidence. The RFE consisted of only two specific points: (1) submit the citation information to which prior counsel had already referred (thereby implying its existence), and (2) do not submit redundant copies of previous submissions. The petitioner's response to the RFE ignored both of these points, duplicating previous submissions instead of providing the one thing that the director had requested.

Counsel, on appeal, correctly argues that citations are not necessary to qualify for the waiver. In this instance, however, the petitioner's previous attorney not only claimed that such citations existed, but that a list of those citations was part of the petition. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)). Once the petitioner or its attorney or representative claims that specific evidence exists, it is the petitioner's responsibility to make that evidence available or provide a persuasive explanation for its absence. It is not at all unreasonable for the director to hold the petitioner to its word in such instances, and false claims by the petitioner or counsel (whether made deliberately or carelessly) about the composition of the record are not a trifling matter. With respect to this last point, counsel repeats prior counsel's claim that the petitioner's initial submission included copies of the beneficiary's "publications," a claim that the record does not support.

Counsel contends that the beneficiary meets the regulatory requirements at 8 C.F.R. § 204.5(k)(3)(ii) for an alien of exceptional ability in the sciences, and that the court's decision in *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010), prohibits the director from imposing additional qualifications beyond those listed in the regulations. Counsel devotes much of the appellate brief to a discussion of how the beneficiary qualifies for classification as an alien of exceptional ability. This discussion is moot, because the director acknowledged that the beneficiary readily qualifies as a member of the professions holding an advanced degree. An additional finding of exceptional ability would not have any effect on the beneficiary's eligibility for the national interest waiver.

Counsel is correct that the Ninth Circuit's *Kazarian* decision prohibits "novel substantive or evidentiary requirements" (*Id.* at 1121), but requiring the petitioner to submit evidence mentioned, but not included,

in the record of proceeding is not a novel substantive or evidentiary requirement. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

The *Kazarian* decision concerns a petition for classification as an alien of extraordinary ability under section 203(b)(1)(A) of the Act. The related regulations included, at 8 C.F.R. § 204.5(h)(3), a list of specific criteria by which a petitioner can establish an alien's extraordinary ability. The logic in the *Kazarian* decision can apply to other classifications that include similar "checklists" of qualifying standards. For the national interest waiver, however, there exists no such list. The regulation at 8 C.F.R. § 204.5(k)(4)(ii) states only: "The director may exempt the requirement of a job offer, and thus of a labor certification . . . if exemption would be in the national interest." The regulation is silent as to how the director should make this determination. *Kazarian*, therefore, does not apply.

In the absence of specific statutory or regulatory requirements, the controlling case law regarding the national interest waiver is *Matter of New York State Dept. of Transportation*, the only precedent decision that addresses the subject. Under that decision, the petitioner must establish "a past history of demonstrable achievement with some degree of influence on the field as a whole" (*Id.* at 219 n.6). The precedent decision did not specify what form the evidence of influence should take, because aliens in a very broad range of occupations might qualify for the waiver. One way to show such influence is through citation of published work. It is for this reason that the director requested the citation evidence to which the petitioner (through prior counsel) had previously referred.

As previously stated, the beneficiary appears to have stopped publishing and presenting his work now that he has ceased to be a student and has begun working in private industry. Therefore, the petitioner must establish the beneficiary's continuing impact in some other fashion. Counsel contends that the beneficiary's "expertise is evidenced and recognized by a variety of sources," but does not elaborate except to note that the beneficiary "has several United States patents." *Matter of New York State Dept. of Transportation* specifically addresses the patent issue, stating that "an alien cannot secure a national interest waiver simply by demonstrating that he or she holds a patent. Whether the specific innovation serves the national interest must be decided on a case by case basis." *Id.* at 221 n.7. Counsel's appellate brief contains no mention of *Matter of New York State Dept. of Transportation*, nor any explanation as to how the petitioner has met the guidelines set forth in that binding precedent decision.

Two more witness letters accompany the appeal. [redacted] states that he has "been nothing but impressed with [the beneficiary's] core skills, work ethic, and ability to deliver," and that the beneficiary is "an invaluable team member" whose "dedication to success is exemplary."

The other new letter on appeal is from [redacted], associate professor at the University of California, Santa Cruz, who worked with the beneficiary "on a project funded by [the petitioner] to develop a low-power low-cost 10Gb/s optical link." [redacted] states that the beneficiary "has shown a good achievement track record."

The opinions of experts in the field are not without weight and the AAO has considered them above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as above, evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)).

In this instance, the petitioner's letters are all from the beneficiary's mentors and collaborators, which cannot establish first-hand the broader extent of the beneficiary's impact and influence. The witnesses all assert that the beneficiary has contributed to the advancement of semiconductor packaging technology, but working toward such improvements appears to be a basic component of his job duties. The petitioner did not hire the beneficiary, or others in the same position, simply to apply existing technology, but rather to improve that technology and expand its boundaries. The intrinsic merit and national scope of such work are not in doubt, but the petitioner has not shown, through objective and independent evidence, that it serves the national interest (rather than the narrower interest of the beneficiary's employer) for the beneficiary to do that work instead of a qualified United States worker. This is not to disparage the beneficiary or his accomplishments, but rather to stress the point that being talented and well-qualified for a given job is not presumptive grounds for granting the national interest waiver. Early in this proceeding, the director had advised the petitioner that its initial submission was deficient, and that further evidence would be necessary. The petitioner has responded, first in response to the RFE and later on appeal, mainly by resubmitting copies of the same materials that the director had already found to be insufficient.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.